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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 85

IDONAH SLADE PERKINS,

Petitioner,

v.

BENGUET CONSOLIDATED MINING COMPANY, an alien business association known as a Sociedad Anonima, et al.,

Respondents.

REPLY BRIEF OF PETITIONER FOR WRIT OF CERTIORARI

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Much of respondent's brief should be stricken from the files as it does not follow the rules of this court as set forth in *Furness, Withby & Co.* v. *Yang—Tsze Insurance Association,* 242 U. S. 430, 434. At best, it either shows an unfamiliarity with court procedure, or a deliberate attempt to evade the issue by appealing to prejudice through irrelevant and false statements.

The only issue before the court on this petition is whether the service of process on a foreign corporation violated the due process clause. It was conceded by the Supreme Court of Ohio that Benguet Consolidated Mining Company was doing business in Ohio, so we are not concerned with the findings of lower courts. It is admitted that personal service was made upon the President and

General Manager of Benguet Consolidated Mining Company. The only question is whether the service should have been quashed because the cause of action arose outside of the state of Ohio. The Supreme Court of Ohio held such service of process in such an action was void solely "as wanting in due process of law within the meaning of that term as used in the Fourteenth Amendment of the Constitution of the United States," and not because of any public policy of the State of Ohio. In fact the court approved the general public policy of the state, which set forth an opposite rule where individuals were involved (*Mattone* v. *Argentina*, 123 Ohio St. 393).

STATEMENT OF THE CASE

Counsel for respondent attempt to distort the facts, laying emphasis on decisions in the Republic of the Philippine Islands, which decisions our courts have said reeked with fraud. See *Perkins* v. *Benguet Consolidated Mining Co.*, 55 Cal. App. (2d) 720, certiorari denied 319 U. S. 774, 320 U. S. 803, 815. Neither does counsel inform the court that Benguet would not lose one cent of it paid the claims of Mrs. Perkins, as it has been fully indemnified by Perkins. The conspiracy in this case is between Benguet and Perkins to deprive Mrs. Perkins of her stock and property, which they have so far succeeded in doing. The plain truth of the matter is that the California courts have declared that Benguet was bound by the New York court ruling which held that Mrs. Perkins was the absolute owner of the stock in question.

These are matters on the merits. Likewise, on pages 7 and 8 of respondent's brief an attempt is made to re-litigate the question of doing business. We are appealing from the order of the Ohio Supreme Court, which has assumed that Benguet was doing business in Ohio. In fact, on this point there was no disagreement among the

judges of that court, although two of the seven judges dissented on the final ruling.

REASONS FOR GRANTING WRIT

The decision of the Supreme Court of Ohio is not in accord with the decisions of this court. In fact, in the Supreme Court of Ohio, counsel for respondent so conceded. We quote from page 108 of that brief:

> "We do not mean to suggest that a non-resident of the State of Ohio such as the Plaintiff, may not sue a non-resident of the State of Ohio, such as Benguet, in any type of action, even though arising outside of the State of Ohio; but what we do say is that in ascertaining whether valid service of process has been made against a foreign corporation in any given case, the Court must consider the elements that Plaintiff and Defendant are non-residents of the State and that the causes of action did not arise within the State out of anything done within the State; and, so considering these matters, the Court must estimate the inconveniences which would result to the foreign corporation by a trial away from its home or principal place of business."

Here is a concession that, as a constitutional matter, Benguet could be sued in Ohio whether the transaction arose outside of the state or not, but there was an effort made by respondents to ask the court to apply the doctrine of *forum non conveniens*. The Supreme Court quashed service in its opinion solely because it "should follow the law on such a federal constitutional question as announced in those decisions by the Supreme Court of the United States." That is an entirely different ground than the one urged by respondent in his brief as just quoted.

In *Robert Mitchell Furniture Co.* v. *Selden Brick Construction Company,* 257 U. S. 213, which is distinguished in *Maichek* v. *Bertha Consumers,* 25 Fed. (2d) 257 (CCA 6), the agent had been appointed for a job long since completed, and the company had not been doing business in Ohio for some time,—certainly not when service was attempted.

An examination of *Missouri Pacific R. R. Co.* v. *Clarendon Boat Ore Co.,* 257 U. S. 533 and *L. & N. Rwy. Co.* v. *Chatters,* 279 U. S. 320 shows that they are not in point, because in the latter case process was sustained and not quashed. Both these cases concern service upon the statutory, appointed agent, as distinguished from the managing agent. In the *Maichek* case, 25 Fed. (2d) 257 (CCA 6) the court specifically said that *this court* had made no ruling on this question, where service was made on a managing agent, and it further found that the settled rule in Ohio upheld such service:

> "It is suggested rather than distinctly claimed that the state cannot rightly subject a foreign corporation to this burden (see *Robert Mitchell Co.* v. *Selden Co.,* 257 U. S. 213); but there has been no such distinct holding by the Supreme Court, and we think we should accept the Ohio rule as affecting foreign corporations which locate themselves in the state for business."

The Ohio Supreme Court did not overrule any previous decisions or declare any new public policy. It merely misinterpreted decisions by this court, and said that the provisions of the *federal* constitution demanded quashing of service. That is the sole issue before this court, and none other is presented.

The forty eight states are entitled to know whether service may be had on a foreign corporation where it is

doing business in a state, or is there a limitation imposed by the federal constitution that such actions are not maintainable when the cause arose outside of the state.

Are foreign corporations to be able to set up an immunity which individuals could not possibly claim?

Respectfully submitted,

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